VENDOR AND PURCHASER—SALE IN GROSS—FRAUD.—Complainants contracted to sell defendants, "all that certain vein or stratum of coal known as the Pittsburg vein, etc., underlying a certain tract and parcel of land containing about 65 acres, be the same more or less," upon a consideration of $25,200. Pursuant to this executory contract a deed was made of "all that certain vein or stratum of coal known as the Pittsburg vein of coal, said to be about sixty-five acres, within, upon and underlying that certain tract of land situate." Subsequent to the contract and before the delivery of the deed survey by the defendants' agents showed a deficiency of 26.32 acres of coal in the tract conveyed. The deed reserved a lien securing a note of $12,500, given in part payment of the purchase price. In this action to sell the coal, subjecting its proceeds to the payment of the note, the deficiency was pleaded. *Held,* the sale was of the coal in gross, and complainants should have judgment for the full amount of the note. *Cork et ux.* v. *Cook et al.* (1904), — W. Va. —, 48 S. E. Rep. 757.

The use of, "said to be about sixty-five acres," in the deed is equivalent in effect to, "more or less." Both are only approximations. And the defendants' conduct in ordering a survey of the tract prior to their acceptance of the deed indicates that complainants' representations, even though false, were not relied on. For fraud which does not mislead is not actionable. 14 AM. & ENG. ENCYC. OF LAW 106 and cases there cited. For the general principles governing the effect of a description of land in a conveyance with an estimate of quantity (of acres) see 1 SUGDEN ON VENDORS 489 and pages following. Courts of chancery will not interfere to relieve the purchaser when land is sold in gross or by boundaries, the words, "more or less," being included upon deliberation, when neither party knows the exact quantity of land conveyed, and it subsequently develops that the quantity is less than the parties supposed, no fraud or intentional misrepresentation appearing. *Bennett & Williams* v. *Marvin,* 8 Paige 311, 316; *Stebbins* v. *Eddy,* 4 Mason 414. But a conveyance of land in gross, although the words, "more or less," are inserted, will not relieve the vendor from liability for a deficiency, except that due to small errors, unless it appear that the vendee purchased at his own risk. *Triplett* v. *Allen et al.,* 26 Gratt. 721. And it is held that the enumeration of quantity after a description of property is mere surplusage and not controlling. *Mann* v. *Pearson,* 2 Johns. 37. If the false representations of the vendor induced the purchase, it matters nothing that the sale was in gross rather than by the acre. *Thomas* v. *Beebe,* 25 N. Y. 244.

WILLS—DOCTRINE OF ELECTION.—Testator devised to his wife a life estate only in property owned by her in fee simple, and gave the remainder to his son. He further imposed a charge of $298 against the life interest, but bequeathed the wife personally valued at $100. The statute would have provided $300 as her year's portion. *Held,* that by taking out letters of administration *cum testamento annexo* the widow elected to assume all the burdens imposed by the will. *Tripp* v. *Nobles* (1904), — N. C. —, 48 S. E. Rep. 675.

A distinction is to be noted between those cases where the election is against being bound by the provisions of the will, and those in favor of it.

The modern view in the former case is that the principle of compensation, rather than that of forfeiture, applies; that is, that just compensation be made to the disappointed donees, and the surplus, if any, remaining be given to the donee exercising the right of election, rather than that the entire gift to him be forfeited. 2 UNDERHILL ON WILLS, § 729; 11 AM. & ENG. ENC. LAW, p. 115, 2nd Ed. *Carper* v. *Crowl,* 149 Ill. 465. On the other hand, it appears that there is no authority for applying the principle of compensation to cases where the election is in favor of the will. The donee so electing relinquishes every inconsistent right and assumes the burdens attached to the devise. *In re Lord Chesham,* L. R. 31 Ch. Div. 466; EATON ON EQUITY, 182. Hence if the principal case be admitted to involve an election, there would seem to be no escape from the conclusion reached in the majority opinion. Election, however, is defined to be a choice which a party is compelled to make between the acceptance of a benefit under an instrument, and the retention of some property, already his own, which is attempted to be disposed of by the same instrument, BISPHAM'S EQUITY, 5th Ed., p. 295; and since nothing was given by the will which would not have been the widow's without one, there seems to be force in the contention of the dissenting opinion that this is not a proper case to involve an election. It would seem just to require that the benefit conferred should be a substantial one in order to put the donee to an election. *Tyler* v. *Wheeler,* 160 Mass. 206.